BALAKRISHNAN KALIANNAN

v.

RITZ GARDEN HOTEL (CAMERON HIGHLANDS) SDN BHD

COURT OF APPEAL, PUTRAJAYA
ZAINUN ALI JCA
RAMLY ALI JCA
AZHAR MA'AH JCA
[CIVIL SUIT NO: C-02-774-2007]
24 DECEMBER 2010

CONTRACT: *Agreement to purchase property - Terms of agreement - Breach of - Court ordered defendant to pay balance purchase price to plaintiff but disallowed interest - Whether plaintiff entitled to claim for interest in respect of payment - Whether there was justification for plaintiff to be deprived of interest*

The plaintiff was the registered owner of a piece of land ('the said land'). By an agreement executed between the plaintiff and the defendant, the defendant had agreed to purchase the said land. Following an allegation of breach of the terms of the agreement, the plaintiff filed an action against the defendant. The High Court judge made an order that with the land already transferred to the defendant, the latter having failed to account for the alleged settlement of a varied price, was required to settle the remainder of the amount of purchase price as full settlement of the purchase price. The High Court in making the above order had disallowed interest in respect of the payment of RM750,000 that was ordered to be paid by the defendant to the plaintiff. Hence, this appeal by the plaintiff. The plaintiff submitted that the award of interest on the judgment sum ought to have been made by the trial judge pursuant to O. 42 r. 12 Rules of the High Court 1980. The defendant, on the other hand, argued that the plaintiff was not entitled to interest because the plaintiff had lodged a private caveat on the said land.

Held (allowing the appeal)
Per Azhar Ma'ah JCA delivering the judgment of the court:

(1) The transfer of the property in question to the defendant was done in breach of the agreement, and therefore, unlawful. The lodgement of the private caveat by the plaintiff was made after

A the transfer of the property by the defendant. In these circumstances, the plaintiff as the aggrieved original owner of the land was justified in lodging the said private caveat. In short, the plaintiff was not at fault. Further, interest is very much a discretionary matter. The discretion has to be
B exercised judiciously. In the circumstances, there was no justification for the plaintiff to be deprived of the interest to which he was entitled under the law. (para 9)

Bahasa Malaysia *Translation Of Headnotes*

C Plaintif adalah pemilik berdaftar sebidang tanah ('tanah tersebut'). Melalui perjanjian yang dilaksanakan di antara plaintif dan defendan, defendan telah bersetuju untuk membeli tanah tersebut. Berikutan satu dakwaan pelanggaran terma perjanjian, plaintif memfailkan tindakan terhadap defendan. Hakim Mahkamah Tinggi
D telah membuat perintah oleh kerana tanah tersebut telah dipindahmilik kepada defendan, dan kegagalan defendan untuk mendapatkan penyelesaian harga yang selalu berubah-ubah, dikehendaki menyelesaikan baki jumlah harga belian sebagai bayaran penuh harga pembelian. Mahkamah Tinggi dalam membuat
E perintah tersebut tidak membenarkan faedah berhubung dengan bayaran RM750,000 yang telah diperintah dibayarkan oleh defendan kepada plaintif. Oleh itu, rayuan ini oleh plaintif. Plaintif berhujah bahawa award faedah pembayaran jumlah penghakiman sepatutnya dibuat oleh hakim bicara mengikut A. 42 k. 12
F Kaedah-Kaedah Mahkamah Tinggi 1980. Defendan pula berhujah bahawa plaintif tidak mempunyai hak ke atas faedah sebab plaintif telah memasukkan kaveat terhadap tanah tersebut.

Diputuskan (membenarkan rayuan)

G **Oleh Azhar Ma'ah HMR menyampaikan penghakiman mahkamah:**

(1) Tindakan pindah milik harta diperkatakan kepada defendan melanggar perjanjian, oleh itu, ia menyalahi undang-undang.
H Kaveat yang dimasukkan oleh plaintif dibuat selepas harta diperkatakan telah dipindah milik oleh defendan. Dalam keadaan ini, plaintif sebagai pemilik asal terkilan tanah tersebut wajar dalam memasukkan kaveat. Pendek kata, plaintif tidak bersalah. Seterusnya, faedah merupakan suatu perkara yang

I

melibatkan budibicara. Budibicara harus dipakai dengan sewajarnya. Dalam keadaan ini, tidak terdapat justifikasi untuk plaintif dinafikan faedah yang beliau berhak mendapatkan di bawah undang-undang.

Case(s) referred to:
Yap Yew Cheong & Anor v. Dirga Niaga (Selangor) Sdn Bhd [2005] 7 CLJ 250 HC ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 11
Rules of the High Court 1980, O. 42 r. 12

For the appellant - Hj Sulaiman Abdullah (R Kengadharan with him); M/s R Kengdharan & Co
For the respondent - Eric Anthony; M/s Eric & Co

[Appeal from High Court, Kuantan; Writ Summon No: 21-1-1996]

Reported by Suhainah Wahiduddin

JUDGMENT

Azhar Ma'ah JCA:

[1] This is an appeal against the decision of the learned High Court judge dated 19 July 2007 wherein an order was made against the plaintiff as well as the defendant in the following terms:

> Having regard to the aforementioned matters I therefore find that the plaintiff has, on a balance of probabilities failed to establish a case for their claim as averred in the statement of claim. However, with the land already transferred, the defendant having equally failed to account for the alleged settlement of a varied price is hereby required to settle the remainder of the amount of purchase price as full settlement of the purchase price. I, therefore, hold as follows:
>
> (1) The land remains registered in the name of Ritz Garden Hotel (Cameron Highlands) Sdn. Bhd.;
>
> (2) The defendant do pay the plaintiff the remainder of the purchase price that is RM750,000.00 within a reasonable time after and upon removal of all the caveats lodged in respect of the land;
>
> (3) Costs to be borne by each party.

[2] It is to be noted that the learned High Court judge in making the above order had disallowed interest in respect of the payment of RM750,000 that was ordered to be paid by the defendant to the plaintiff being the balance of the purchase price of the land in question. Hence this appeal by the plaintiff.

[3] The facts relevant to this appeal may briefly be stated as follows.

[4] The plaintiff is the registered owner of a piece of land known as QT(R) Lot No. L.O.C.H. 235/62, Mukim Tanah Rata, Daerah Cameron Highlands. By an agreement dated 12 December 1991 executed between the plaintiff and the defendant, the defendant had agreed to purchase the said land. The salient terms of the said agreement relevant to the present appeal may be listed as follows:

(a) Purchase price RM1,000,000.

(b) Deposit RM250,000.

(c) Balance of purchase price RM750,000 to be paid in the form of shares constituting 20% of the defendant's paid-up capital.

(d) Defendant within two weeks from date of receipt of the document of title registered in the name of the plaintiff to submit all applications accompanied by building plans and specifications for development of the said land into hotel and cum condominium.

(e) Defendant to obtain approval from the relevant authorities in respect of the construction before the expiry of two years from the date of the said agreement.

(f) Defendant only to register the adjudicated transfer upon full payment of the purchase price to the plaintiff.

[5] Following allegation of breach of the above terms by the defendant, the plaintiff filed an action against the defendant seeking an order against the latter in the following terms:

> A. Bahawa Perjanjian bertarikh 12hb Disember 1991 yang disempurnakan di antara plaintif dan defendan dianggap sebagai ditamatkan oleh kerana kemungkiran defendan.

B. Wang RM250,000 yang dibayar oleh defendan kepada plaintif sebagai deposit disimpan oleh plaintif sebagaimana gantirugi jumlah tertentu.

C. Satu perintah di bawah seksyen 417 Kanun Tanah Negara, 1965, mengarahkan Pendaftar Hakmilik Pahang untuk memperbetulkan daftarnya untuk mendaftar balik hakmilik hartanah tersebut kepada nama plaintif sebagai pemilik berdaftar yang sah.

D. Gantirugi umum bagi kemungkiran perjanjian.

E. Faedah pada kadar 8% setahun dari tarikh Saman difailkan sehingga tarikh penjelasan penuh.

F. Kos tuntutan.

The Appeal

[6] Tuan Haji Sulaiman Abdullah, for the appellant/plaintiff at the outset of his submission before us, however, informed the court that plaintiff was pursuing the appeal only on the issue of interest on RM750,000 that was ordered by the court to be paid to the plaintiff. It is submitted that the award of interest on the judgment sum ought to have been made by the trial judge pursuant to O. 42 r. 12, Rules of the High Court 1980. In fortification of this proposition our attention is drawn to a decision in *Yap Yew Cheong & Anor v. Dirga Niaga (Selangor) Sdn Bhd* [2005] 7 CLJ 250. In that case Abdul Malik Ishak J (as he then was) in stating the principle of law respecting the award of pre-judgment and post-judgment interest as laid down under the Rules of the High Court 1980, had this to say:

> ... it is now settled law that the plaintiffs could claim for pre-judgment and post-judgment interests. In regard to the post-judgment interest, from the date of judgment until the date of realisation the plaintiffs were entitled to 8% on the judgment debt computed and comprised by the principle sum plus judgment interest pursuant to O. 42 r. 12 Rules of the High Court, 1980.

[7] Besides the aforementioned subsidiary legislation there is also s. 11 of Civil Law Act 1956, which explicitly vests discretionary power on the court to award interests in respect of recovery of debt and damages by a party. Clearly, under that provision the court may, if it thinks fit, order that an interest be included in the

A sum for which judgment is given as such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

B **[8]** In its response to the above issue, it is submitted for the defendant that the plaintiff is not entitled to interest because the plaintiff had lodged a private caveat on the said land, whilst the defendant on the other hand has always been ready, able and willing to pay but on condition that the plaintiff removes the C caveat. Our view on this contention is that on the factual matrix of the evidence before the court it is apparent that the crux of the agreement between the parties was for them to embark on a joint-venture to develop the plaintiff's land into hotel cum condominium with terms and conditions as earlier mentioned. D Clearly, from the evidence as found by the learned trial judge the defendant had not fulfilled conditions (c), (d) and (e) above. Notwithstanding that the defendant had proceeded to have the property in question transferred and registered in its name. Although it is the contention of the defendant that there was an E oral agreement by the parties subsequently to vary the joint-venture agreement in particular a reduction in the sale and purchase price, the learned trial judge in her decision had found that the defendant had failed to prove that such oral agreement took place. Hence, the order that "the defendant do pay the F plaintiff the remainder of the purchase price that is RM750,000 ...".

[9] Since the learned trial judge had rejected the defendant's claim that there was an oral agreement to vary the terms and G conditions of the JV agreement it must necessarily follow that the transfer of the land by the defendant to itself can only be done after all terms and conditions as stipulated in the agreement had been fulfilled. Clearly, from the evidence the defendant had failed to keep its side of the bargain. In the circumstances, we are of H the view that the transfer of the property in question to the defendant was done in breach of the agreement and, therefore, unlawful. Perusal of the appeal record shows that the lodgment of the private caveat by the plaintiff was made after the transfer of the property by the defendant. In these circumstances, the plaintiff as the aggrieved original owner of the land is justified in lodging I

the said private caveat. In short, the plaintiff is not at fault. Further, we are mindful of the fact that interest is very much a discretionary matter. The discretion has to be exercised judiciously. In the circumstances of this case, we do not see any justification for the plaintiff to be deprived of the interest to which he is entitled under the law as aforesaid. By reason of these, we allowed the appeal with no order as to costs.